

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Waste Management

(Amendment)

401 KAR 42:060. UST System release~~[response]~~ and corrective action requirements~~[for UST systems containing petroleum or hazardous substances]~~.

RELATES TO: KRS 224.1, 224.1-400(11)[224.01], 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R.~~[Part]~~ 280, Subparts E, F, and G, 40 C.F.R. 281, Subpart D[F], 42 U.S.C.6991 – 6991m~~[6991-6991e]~~

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks (USTs) by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of UST systems, change in service of UST systems, site characterization, corrective action, and classification and screening levels of UST systems containing petroleum~~[public participation]~~.

1 Section 1. Reporting for Releases, Spills, and Overfills~~[1. General Requirements]~~. (1)
2 Reporting of confirmed or suspected releases shall be as established in 40 C.F.R. 280.50 and this
3 section.

4 (2) Except as established in subsection (3) of this section, reporting and cleanup
5 requirements for spills and overfills shall be as established in 40 C.F.R. 280.53.

6 (3) Confirmed or suspected releases, spills, and overfills, shall be reported immediately, in
7 accordance with KRS 224.1-400(11), to the cabinet's 24-hour Emergency Response Line at (800)
8 928-2380 or (502) 564-2380.

9 (4) An unusual operating condition shall be reported immediately as a suspected release to
10 the cabinet's 24-hour Emergency Response Line at (800) 928-2380 or (502) 564-2380, unless:

11 (a) The system equipment or component is found not to be releasing regulated substances
12 to the environment;

13 (b) Any defective system equipment or component is immediately repaired or replaced;
14 and

15 (c) For secondarily contained systems, any liquid in the interstitial space not used as part
16 of the interstitial monitoring method is immediately removed.

17 Section 2. Declared Environmental Emergencies. During the course of an environmental
18 emergency declared by the Environmental Response Branch, the cabinet shall have the authority
19 to prevent delivery, deposit, storage or dispensing of regulated substances and require all actions
20 necessary to protect human health and the environment.

21 Section 3. Off-Site Impacts. Requirements for Investigations due to off-site impacts shall
22 be as established in 40 C.F.R. 280.51.

1 Section 4. Release Investigation and Confirmation. (1) Procedures for suspected release
2 investigation and confirmation shall be as established in 40 C.F.R. 280.52 and this administrative
3 regulation.

4 (2) Owners and operators shall must immediately investigate and test, within seven (7)
5 days, any UST component that may contribute to a confirmed or suspected release, or an unusual
6 operating condition required to be reported in accordance with Section 1. Any defective UST
7 component shall be repaired or replaced as soon as practical but shall not exceed the time
8 requirements established in 401 KAR 42:020.

9 (3) Owners and operators shall perform a site check when directed by the cabinet in
10 accordance with Section 3.0 of the UST Corrective Action Manual.

11 Section 5. Release Response and Corrective Action. (1) General requirements shall be as
12 established in 40 C.F.R. 280.60 through 280.67.

13 (2) The procedures in the UST Corrective Action Manual shall be followed.

14 (3) In addition to the requirements established in 40 C.F.R. 280.62 and 280.63, the owner
15 or operator shall complete and submit to the cabinet the UST Site Check Checklist, DWM 4268.

16 (4) In addition to the requirements established in 40 C.F.R. 280.63 and 280.65, the owner
17 or operator shall complete and submit to the cabinet the~~[Section 2. Initial Response. Initial~~
18 ~~response requirements shall be as established in 40 C.F.R. 280.61.~~

19 ~~Section 3. Initial Abatement Measures and Site Check. (1) Requirements for initial~~
20 ~~abatement and site check shall be as established in 40 C.F.R. 280.62 and 280.63.~~

21 ~~(2) The following documents shall be used to meet the requirements of subsection (1) of~~
22 ~~this section]:~~

(a) UST Over-Excavation Checklist, DWM 4267~~[Release Response and Initial Abatement Requirements Outline]~~;

(b) UST Site Investigation Checklist, DWM 4269~~[Check Outline]~~;

(c) UST~~[Site Check Report Form, DEP 6082;~~

~~(d)]~~ Vapor Intrusion Building Assessment Checklist, DWM 4271~~[, DEP 0058]~~; and

~~(d)[(e)]~~ UST Vapor Intrusion Assessment Checklist, DWM 4270~~[, DEP 0057]~~.

(5) In addition to the requirements established in 40 C.F.R. 280.66 and 280.67, the owner or operator shall complete and submit to the cabinet the~~[Section 4. Free Product Removal. Removal of free product shall be as established in 40 C.F.R. 280.64.~~

Section 5. Investigations for Soil and Groundwater Cleanup. (1) ~~Investigations for soil and groundwater cleanup shall be as established in 40 C.F.R. 280.63 and 280.65.~~

~~(2) The following documents shall be used in meeting the requirements of subsection (1) of this section:~~

~~(a) Site Investigation Outline;~~

~~(b) Over Excavation Report Form, DEP 4067; and~~

~~(c) Site Investigation Report Form, DEP 8049.~~

~~(3) Owners and operators shall undertake, as directed in writing by the cabinet, corrective actions necessary to ensure all domestic-use wells, domestic-use springs, and domestic-use cisterns impacted by a release from a regulated UST system meet the maximum contaminant levels specified in 401 KAR Chapter 8, applicable to the regulated substance stored.~~

Section 6. Corrective Action Plan. (1) ~~Requirements for a corrective action plan shall be as established in 40 C.F.R. 280.66.~~

(2) ~~The following documents shall be used to meet the requirements of subsection (1) of this section]:~~

(a) UST Corrective Action Certification, DWM 4263~~[Outline];~~

(b) UST Over-Excavation Checklist, DWM 4267~~[Report Form, DEP 4067];~~

(c) UST Groundwater Monitoring Checklist, DWM 4264~~[Corrective Action Report Certification, DEP 5040]; and~~

(d) UST Interim Corrective Action Checklist, DWM 4265~~[Monitoring Report Form, DEP 8045].~~

(6) The forms referenced in subsections (3) through (5) shall be certified by a professional engineer or a professional geologist.

(7) Owners and operators shall undertake, as directed in writing by the cabinet, corrective actions necessary to ensure all domestic-use wells, domestic-use springs, and domestic-use cisterns impacted by a release from a regulated UST system do not exceed the maximum contaminant levels, specified in 401 KAR Chapter 8, applicable to the regulated substance stored.

Section 6. Permanent Closure or Change in Service. (1) Owners or operators performing permanent closure, or change in service, of a UST system shall comply with the requirements of Section 4.0 of the UST Corrective Action Manual.

(2)(a) This administrative regulation shall apply to an owner or operator of a UST system that has a UST system release confirmed after October 6, 2011 or has submitted a UST Notice of Intent to Permanently Close Underground Storage Tank System, DWM 4266, that has been received by the appropriate Division of Waste Management regional office after October 6, 2011.

(b) With the exception of those UST systems addressed in paragraph (c) of this subsection, the owners and operators of a UST system who have, prior to October 6, 2011, either submitted a

notice of intent to permanently close UST systems or reported a confirmed release to the cabinet, shall comply with the closure requirements in effect when the notice of intent to permanently close UST systems was received by the appropriate Division of Waste Management regional office or the confirmed release was reported to the cabinet. This paragraph shall not apply to the screening levels, which shall be determined in accordance with Section 7.

(c) An owner or operator shall comply with the permanent closure requirements that were in place prior to April 18, 1994 for:

1. A UST system from which dispensing had ceased prior to April 18, 1994, regardless of the submittal date of the UST Notice of Intent to Permanently Close Underground Storage Tank System;

2. A UST system for which a UST Notice of Intent to Permanently Close Underground Storage Tank System was submitted after December 22, 1988 but prior to April 18, 1994; or

3. A UST system for which a confirmed release was reported prior to April 18, 1994, regardless of the submittal date of the UST Notice of Intent to Permanently Close Underground Storage Tank System.

(3)(a) Owners and operators shall notify the cabinet of intent to permanently close or make a change in service for a UST system a minimum of fourteen (14) days prior to beginning either the permanent closure or change in service in accordance with subsections (1) and (4).

1. The notice shall be completed and submitted on the UST Notice of Intent to Permanently Close Underground Storage Tank System, DWM 4266.

2. Initial abatement action shall not alleviate owners and operators of the responsibility to notify the cabinet of the intent to permanently close a UST system.

1 3. The cabinet may specify a shorter notification time prior to permanent closure if
2 permanent closure activities are completed in response to actions conducted in accordance with
3 Sections 2.0 and 3.0 in the UST Corrective Action Manual or actions directed by the
4 Environmental Response Branch.

5 (b) The UST Notice of Intent to Permanently Close Underground Storage Tank System,
6 DWM 4266, shall only be valid for twelve (12) months following submittal to the cabinet.

7 (4) An assessment at permanent closure or change in service shall meet the requirements
8 of this subsection.

9 (a)1. In order to complete permanent closure, or a change in service of a UST system,
10 owners and operators shall measure for the presence of a UST system release in accordance with
11 Section 2.0 of the UST Corrective Action Manual.

12 2. Permanent closure activities shall be reported to the cabinet within ninety (90) days after
13 UST system removal, closure in place, or change in service, in accordance with the Section 4.7 of
14 the UST Corrective Action Manual.

15 (b) If analytical results from permanent closure sampling indicate that further actions are
16 necessary, those actions shall be performed at the written direction of the cabinet in accordance
17 with Section 5.0 of the UST Corrective Action Manual.

18 (c) The handling, transportation, and disposal of a regulated substance from a UST system
19 and contaminated soils, backfill materials, groundwater, cleaning liquids, and other similar
20 materials generated during activities performed in accordance with this administrative regulation
21 shall be performed in accordance with applicable requirements of 401 KAR Chapters 30 through
22 49.

1 (5) Applicability to previously closed UST systems shall be as established in 40 C.F.R.
2 280.73.

3 (6) Requirements for reporting and maintaining closure records shall be as established in
4 this subsection.

5 (a)1. Owners or operators shall complete and submit to the cabinet a UST Closure
6 Assessment Report Checklist, DWM 4262, within ninety (90) days of the date of permanent
7 closure or a change in service, in accordance with Section 4.7 of the UST Corrective Action
8 Manual.

9 2. The UST Closure Assessment Report Checklist, DWM 4262, shall be certified by a
10 professional engineer or a professional geologist.

11 (b) Owners or operators shall complete and submit a UST Certification of Properly Cleaned
12 USTs, DWM 4260, to the cabinet if a UST system is permanently closed by removal.

13 (c) Record keeping shall be as established in 40 C.F.R. 280.74.

14 Section 7. UST Facility Classification~~[Public Participation. Public participation shall be as~~
15 ~~established in 40 C.F.R. 280.67].~~

16 (1)(a) An owner or operator of a UST system for which a UST Notice of Intent to
17 Permanently Close Underground Storage Tank System containing petroleum was submitted, or a
18 confirmed UST system release of petroleum was reported to the cabinet, on or after April 18, 1994,
19 shall be required to classify the UST system in accordance with this section.

20 (b) The owner or operator shall, if the UST system is permanently closed after January 4,
21 2019, or if directed by the cabinet, in order to appropriately classify the UST system, submit a
22 UST Classification Guide, DWM 4261, which shall be certified by a professional engineer or a
23 professional geologist.

1 (c) Section 7.0 of the UST Corrective Action Manual shall be used in completing the UST
2 Classification Guide, DWM 4261, for determining the classification of a UST system.

3 (d) Section 7.0 of the UST Corrective Action Manual lists the applicable screening levels
4 for petroleum constituents for each classification.

5 (2) An owner or operator of a UST system who either submitted a UST Notice of Intent to
6 Permanently Close Underground Storage Tank System or reported a confirmed UST system
7 release of petroleum to the cabinet, or for which dispensing ceased, prior to April 18, 1994, shall
8 not be required to classify in accordance with this administrative regulation, unless:

9 (a) After January 4, 2019, the owner or operator reports an additional confirmed UST
10 system release of petroleum to the cabinet; and

11 (b) The additional confirmed UST system release of petroleum is commingled with a UST
12 system release of petroleum associated with the UST Notice of Intent to Permanently Close
13 Underground Storage Tank System submitted prior to April 18, 1994, or the UST system release
14 of petroleum reported to the cabinet prior to April 18, 1994.

15 (3) An owner or operator of a UST system that chooses, after January 4, 2019, to remove
16 from the ground a UST system for which dispensing ceased prior to April 18, 1994, shall not be
17 required to classify in accordance with this administrative regulation.

18 (4) An owner or operator may submit, in accordance with 401 KAR 30:020, Section 2, a
19 written request for a variance to the applicable screening levels established in accordance with this
20 administrative regulation if:

21 (a) Prior to January 4, 2019:

22 1. A UST Notice of Intent to Permanently Close Underground Storage Tank System
23 containing petroleum was submitted to the cabinet; or

1 2. A confirmed UST system release of petroleum was reported to the cabinet; and

2 (b) The allowable levels previously applicable to the UST facility are less stringent than
3 the screening levels established by this administrative regulation.

4 (5) An owner or operator, required to classify a UST system in accordance with this
5 administrative regulation, shall utilize the screening levels established in Section 7.0 of the UST
6 Corrective Action Manual, regardless of the date of permanent closure of the UST system.

7 Section 8. No Further Action Letter. (1) A no further action letter shall be issued when the
8 cabinet has determined that all applicable requirements in 401 KAR Chapter 42 have been met.

9 (2) Any unpaid annual fees due in accordance with 401 KAR 42:020, shall be paid in full
10 prior to the cabinet issuing a no further action letter.

11 (3) If a threat to human health or the environment exists, related to a release or permanent
12 closure for which a No Further Action letter was previously issued, the cabinet shall revoke the
13 No Further Action letter and require necessary action in accordance with 401 KAR Chapter 42.

14 Section 9. Extensions. (1) The owner or operator of a UST system may request an extension
15 to a deadline established by this administrative regulation or established by the cabinet in writing
16 pursuant to this administrative regulation.

17 (2) The extension request shall be submitted in writing and received by the Underground
18 Storage Tank Branch of the Division of Waste Management prior to the deadline.

19 (3) The cabinet shall grant an extension, if an extension would not have a detrimental
20 impact on human health or the environment.

21 (4) The cabinet shall not grant an extension for any requirements established in Sections 1,
22 2, 4(1), or 4(2).

~~[Section 9. No Further Action Letter. (1) If a UST facility has met all applicable requirements in 401 KAR Chapter 42, the cabinet shall issue a no further action letter.~~

~~(2) Any unpaid registration fees due in accordance with 401 KAR 42:200, shall be paid in full prior to the cabinet issuing a no further action letter.~~

~~(3) If a threat to human health or the environment exists, related to a release or permanent closure for which a No Further Action letter was previously issued, the cabinet shall revoke the No Further Action letter and require necessary action in accordance with 401 KAR Chapter 42.]~~

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "UST Certification of Properly Cleaned USTs", DWM 4260, March 2018;
- (b) "UST Classification Guide", DWM 4261, March 2018;
- (c) "UST Closure Assessment Report Checklist ", DWM 4262, March 2018;
- (d) "UST Corrective Action Certification", DWM 4263, March 2018;
- (e) "UST Groundwater Monitoring Checklist", DWM 4264, March 2018;
- (f) "UST Interim Corrective Action Checklist", DWM 4265, March 2018;
- (g) "UST Notice of Intent to Permanently Close Underground Storage Tank System", DWM 4266, March 2018;
- (h) "UST Over-Excavation Checklist", DWM 4267, March 2018;
- (i) "UST Corrective Action Manual", March 2018;
- (j) "UST Site Check Checklist", DWM 4268, March 2018;
- (k) "UST Site Investigation Checklist", DWM 4269, March 2018;
- (l) "UST Vapor Intrusion Assessment Checklist", DWM 4270, March 2018; and

(m) "UST Vapor Intrusion Building Assessment Checklist", DWM 4271, March 2018~~["Release Response and Initial Abatement Requirements Outline", November 2016;~~
~~(b) "Site Check Outline", November 2016;~~
~~(c) "Site Check Report Form", DEP 6082, November 2016;~~
~~(d) "Vapor Intrusion Building Assessment", DEP 0058, November 2016;~~
~~(e) "Vapor Intrusion Assessment", DEP 0057, November 2016;~~
~~(f) "Site Investigation Outline", November 2016;~~
~~(g) "Over Excavation Report Form", DEP 4067, November 2016;~~
~~(h) "Site Investigation Report Form", DEP 8049, November 2016;~~
~~(i) "Corrective Action Outline", November 2016;~~
~~(j) "Corrective Action Report Certification", DEP 5040, November 2016; and~~
~~(k) "Corrective Action Monitoring Report Form", DEP 8045, November 2016].~~

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(3) This material is also available on the Division of Waste Management's Web site at <http://waste.ky.gov/ust>.